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IN THE

SUPREME COURT OF THE UNITED STATES

No. 289

FIRST AMERICAN INSURANCE COMPANY,
Petitioner,

vs.

JOHN P. O'CONNOR,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

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IN THE

SUPREME COURT OF THE UNITED STATES

No. _____

FIRST AMERICAN INSURANCE COMPANY,
Petitioner,

vs.

JOHN P. O'CONNOR,
Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Petitioner, FIRST AMERICAN INSURANCE COMPANY, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above case on April 18, 1968.

OPINION BELOW

The Opinion of the court below (Appendix A) is reported in 392 F.2d 588.

JURISDICTION

The Judgment of the United States Court of Appeals for the Fifth Circuit was entered on April 18, 1968. (Ap-

pendix B) The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1.

WHETHER FULL FAITH AND CREDIT REQUIRES ENFORCEMENT OF AN ILLINOIS JUDGMENT WHERE THE DEFENDANT IS DENIED DUE PROCESS OF LAW IN THE ILLINOIS PROCEEDING.

2.

WHETHER FULL FAITH AND CREDIT REQUIRES A FEDERAL COURT SITTING IN FLORIDA TO ENFORCE A JUDGMENT OF AN ILLINOIS COURT WHICH WOULD NOT BE ACCORDED FULL FAITH AND CREDIT BY THE STATE COURTS OF FLORIDA.

STATUTE INVOLVED

The Constitutional provisions involved are U.S. Const. Art.IV, §1, U.S.Const. Amends. V and XIV, §1.

The statutory provision involved is 28 U.S.C. §1738 (Appendix C).

STATEMENT

Plaintiff below filed his Complaint in the United States District Court, Southern District of Florida, seeking to enforce a money judgment of the Circuit Court of

Cook County, Illinois, against an insured of defendant's predecessor corporation. (R. 1-4) The jurisdiction of the district court was invoked because of diversity of citizenship, the plaintiff being a citizen of Illinois, and the defendant corporation being a Florida corporation with its principal place of business in Florida.

The agreed issue arose from plaintiff's claim against defendant, as successor to Public National Insurance Company, for an unsatisfied Illinois judgment. The Illinois proceedings involved personal injuries allegedly sustained by plaintiff as the proximate result of the negligence of Public National's insured. There was no question as to coverage.

Defendant's sole contention below was that the Illinois judgment was not entitled to full faith and credit in the United States District Court for the Southern District of Florida for the reason that defendant's insured was denied due process of law in the Illinois proceedings. (R. 34-35)

The original Complaint for damages was filed in the Circuit Court of Cook County, Illinois, on July 19, 1957, each defendant entering a general appearance. (R. 41) An Amended Complaint and Answer to Amended Complaint were filed in February and April, 1958. (R. 9)

On January 21, 1964, defendant's counsel sent notice to all parties of a hearing on counsel's Motion to Withdraw to be held on January 23, 1964. This notice was sent to the insured *in California* and to the insurer *in Florida.* Two days later, January 23, 1964, the court entered its order allowing the attorney to withdraw.

One day later, January 24, 1964, plaintiff filed a Second Amended Complaint with permission of court, and *trial on the merits was held*—both acts accomplished without notice to the insured or the insurer. (Plaintiff's Exhibit No. 1)

In the absence of the defendant, who was not in default, the jury returned verdicts for plaintiff and his wife totaling $2,000. Plaintiff filed a Motion for New Trial on the issue of damages only. The original court file contains nothing to indicate that notice of this motion was given to any interested party. (Plaintiff's Exhibit No. 1)

The Motion for New Trial was heard, again in the absence of defendants or counsel, and a new trial was granted. The second trial of the cause was held without notice to the insured or insurer, or their presence. (Plaintiff's Exhibit No. 1) The second trial resulted in a judgment of $15,000. Thirteen months later, new counsel for defendant, filed a motion to vacate this judgment, which was denied. No appeal was taken from this order. (R. 41, Plaintiff's Exhibit No. 3)

Plaintiff thereafter came into the United States District Court for the Southern District of Florida to enforce the $15,000 judgment of the Illinois Court.

The cause was submitted for final judgment without jury based upon the pleadings, Order on Pre-Trial Hearing and evidence adduced at hearing. (R. 40) The District Court determined that the full faith and credit requirement of the United States Constitution (U.S.Const. Art. IV, §1) required enforcement of the Illinois judgment

(R. 42); and Final Judgment for plaintiff was, accordingly, rendered. (R. 43-44) An appeal was taken from this judgment to the United States Court of Appeals for the Fifth Circuit. (R. 44-45) By Opinion and Judgment (Appendix A, Appendix B), that Court affirmed the judgment of the District Court based upon the authority of *Midessa Television Co., Inc. v. Motion Pictures for Television, Inc.*, 290 F.2d 203 (5th Cir.1961)[1]; which cites a "general rule" that full faith and credit requires enforcement of the judgment of a state court unless it is shown that the judgment was entered without jurisdiction. The "general rule" cited is subject to important limitations as is hereinafter set forth, and the case is inapplicable in any event in that defendant had proper notice of proceedings, but voluntarily chose not to appear and present a defense.

REASONS FOR GRANTING THE WRIT

1. This case presents a substantial question under the Full Faith and Credit Clause (Art.IV, §1) of the Constitution. Whatever has been the determination of the state court in Illinois, the Federal District Court or the Circuit Court of Appeals, this Court "is the final arbiter of questions arising under the Full Faith and Credit Clause." *Morris v. Jones*, 329 U.S. 545, 552, 91 L.Ed. 488 67 S.Ct. 451 (1947).

2. The decision of the court below in the instant case is directly in conflict with the decision of this Court in *Windsor v. McVeigh*, 93 U.S. 274, 23 L.Ed. 914 (1876). In *Windsor*, this Court determined that a judgment en-

[1]For convenience, the opinion in the *Midessa Television Co.* case is printed as Appendix D to this Petition.

tered without an opportunity to be heard is void, outside the jurisdiction of the court, and a denial of judicial due process. Furthermore, jurisdiction is the right to hear *and* determine, not to determine without an opportunity to be heard. Where there is no opportunity to be heard, there can be no exercise of jurisdiction.

The Illinois judgment in the instant case was entered without adequate notice of hearing on counsel's motion to withdraw, without notice of trial, without notice of hearing on motions, without notice of subsequent trial, and with absolutely no opportunity afforded to appear and defend. It was error to accord such a judgment full faith and credit in a Federal court where that judgment patently violated the right to appear and defend. (It is to be noted that the proceedings in Illinois were also in derogation of defendants' rights under the rules of practice of Illinois, R. 11)

> "The law is, and always has been that whenever notice or citation is required, the party cited has the right to appear and be heard; and when the latter is denied, the former is ineffectual for any purpose. The denial to a party in such a case, of the right to appear, is in legal effect the recall of the citation to him." *Windsor v. McVeigh*, 93 U.S. 274, 23 L.Ed. 914, 916 (1876).

The fact that in *Windsor v. McVeigh*, supra, the right of defendant to appear and defend was actually prohibited by order of the court, while here the right to appear and defend was constructively prohibited by a complete lack of notice, is wholly immaterial to the basic issue involved.

The Court below based its judgment solely on a de-

termination that the judgment of the Circuit Court of Cook County, Illinois, was not subject to collateral attack because that court had jurisdiction over the parties and subject matter, citing *Midessa Television Co., Inc. v. Motion Pictures For Television, Inc.*, 290 F.2d 203 (5th Cir. 1961). While the *Midessa Television* case states the general proposition that full faith and credit requires a Federal court to enforce the judgment of a state court unless it is shown that the judgment was entered without jurisdiction, it does so under circumstances which nullify its effect here. The court there specifically noted that the defendant had legal notice of hearing, and, nevertheless, voluntarily chose not to assert defenses. Further, under the pronouncement in *Windsor v. McVeigh*, the judgment here *was* entered without jurisdiction, and full faith and credit does not require its enforcement even under the *Midessa* rule.

Any effort to stretch the general rule set forth in the above-cited case to justify enforcement of the Illinois judgment here collides with the clarion words of this Court in *Windsor v. McVeigh*, supra, at page 917:

> "The doctrine . . . that, where a court has once acquired jurisdiction . . . its judgment, however erroneous, cannot be collaterally assailed, is, undoubtedly correct as a general proposition; but, like all general propositions, is subject to many qualifications in its application. * * * Though the court may possess jurisdiction of a cause, of the subject-matter and of the parties, it is still limited in its modes of procedure, and in the extent and character of its judgments. It must act judicially in all things and cannot then transcend the power conferred by the law."

The fact that long subsequent to trial, counsel did appear for defendant and attempt to set aside the judgment, and that no appeal was taken from the denial, does not clothe with propriety a judgment entered in excess of the court's jurisdiction. The Full Faith and Credit Clause did not prohibit review of either the denial or the judgment, and the district court erroneously held otherwise.

3. Clearly, resolution of the question presented is of utmost importance in clarifying the relationship between the Full Faith and Credit Clause and the constitutional guaranty of due process contained in the Fifth and Fourteenth Amendments to the Constitution, and calls for the exercise of this Court's power of supervision.

A judgment entered without notice of proceedings, depriving a party of an opportunity to be heard (as here), is a denial of judicial due process, even though the court had previously acquired jurisdiction over the person and property of the defendant. *Windsor v. McVeigh*, 93 U.S. 274, 23 L.Ed. 914 (1876). Furthermore, a judgment obtained in violation of due process is not entitled to full faith and credit because the requirement of full faith and credit was never intended to modify the constitutional provision guaranteeing due process. *Bigelow v. Old Dominion Copper Mining & Smelting Co.*, 225 U.S. 111, 56 L.Ed. 1009, 32 S.Ct. 641 (1912); *Griffin v. Griffin*, 327 U.S. 220, 90 L.Ed. 635, 66 S.Ct. 556 (1946); *Hanson v. Denckla*, 357 U.S. 235, 2 L.Ed.2d 1283, 78 S.Ct. 1228 (1958).

As is so aptly stated in the dissent to *Morris v. Jones*, 329 U.S. 545, 558, 91 L.Ed. 488, 67 S.Ct. 451 (1947), the Full Faith and Credit Clause "does not embody an ab-

solutist conception of mechanical applicability. As is so often true of constitutional problems, an accommodation must be struck between different provisions of the Constitution."

To refuse to review proceedings of a state court solely because jurisdiction had once been obtained over a defendant's person, even though there has been no reasonable opportunity to appear and defend, ostensibly because of the Full Faith and Credit Clause, is an "absolutist conception of mechanical applicability." *Morris v. Jones*, supra.

4. Application of the Full Faith and Credit Clause to enforce a judgment of a state court entered in the absence of jurisdiction and due process of the law departs from yet another settled principle of judicial proceeding. Where jurisdiction in a Federal District Court is founded on diversity of citizenship, as here, that court will apply the conflict of law rules of the forum state. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 85 L.Ed. 1477, 61 S.Ct. 1020 (1941). The conflicts law of the State of Florida refuses full faith and credit to judicial acts of sister states which are repugnant to the laws or policy of Florida. *Mott v. First Nat'l Bank*, 98 Fla. 444, 124 So. 36.

It is the very essence of due process in Florida that fair notice and a reasonable opportunity to be heard shall be given interested parties before judgment is rendered. *McDaniel v. McElvy*, 91 Fla. 770, 108 So. 820, 51 A.L.R. 731; *Tibbets v. Olson*, 91 Fla. 824, 108 So. 679; *Ryan's Furniture Exch., Inc. v. McNair*, 120 Fla. 109, 162 So. 483; *Mayflower Inv. Co. v. Brill*, 137 Fla. 287, 188 So.

205; *Western Union Tel. Co. v. Suit*, 153 Fla. 490, 15 So.2d 33; *Reichert v. Appel*, Fla. 1954, 74 So.2d 674.

Under the facts set forth above, the Illinois judgment would not be accorded full faith and credit in the courts of Florida, and, consequently, should not be accorded full faith and credit by a Federal court sitting in Florida.

CONCLUSION

As a prerequisite to application of the full faith and credit doctrine, the trial judge below determined that he was not at liberty to review the Illinois order refusing to vacate the previously rendered judgment. (R. 57) The district judge was not required to do so in order to refuse to enforce this judgment in the State of Florida. What an Illinois court says about the validity of its own judgment in the State of Illinois can have no effect on whether such judgment is entitled to be enforced by a Federal court sitting in Florida. Furthermore, that the Circuit Court of Cook County, Illinois, originally had jurisdiction over the parties and subject matter before it does not require application of the full faith and credit doctrine to a patently invalid judgment entered without jurisdiction.

Where the judgment of a state court is rendered in the absence of due process, regardless of jurisdiction over person or property, no constitutional provision requires or permits enforcement by another tribunal. The finding of the trial judge here to the contrary was error.

The insured or defendant's predecessor having been denied his inherent right to be heard, the judgment subsequently rendered could not be enforced in a Federal Dis-

trict Court. For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24782

FIRST AMERICAN INSURANCE COMPANY,
Appellant,

versus

JOHN P. O'CONNOR,
Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(April 18, 1968.)

Before TUTTLE and GOLDBERG, Circuit Judges and HOOPER, District Judge.

PER CURIAM: This judgment, based upon a foreign judgment of the Circuit Court of Cook County, Illinois, is AFFIRMED. See *Midessa Television Co. v. Motion Pictures for Television*, 5th Cir., 290 F.2d 203, (1961).

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1967

No. 24782

D. C. Docket No. CA 66-687-SL

FIRST AMERICAN INSURANCE COMPANY,
Appellant,

versus

JOHN P. O'CONNOR,
Appellee.

Appeal from the United States District Court for the Southern District of Florida.

Before TUTTLE and GOLDBERG, Circuit Judges and HOOPER, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, First American Insurance Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

April 18, 1968

Issued as Mandate: May 14, 1968

APPENDIX C

Constitution of the United States, Article IV, Section 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Constitution of the United States, Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Constitution of the United States, Amendment XIV, Section 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. §1738 State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. June 25, 1948, c. 646, 62 Stat. 947.

APPENDIX D

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

May 17, 1961.

No. 18737.

MIDESSA TELEVISION CO., INC.,
Appellant,

v.

MOTION PICTURES FOR TELEVISION, INC.,
Appellee.

HUTCHESON, Circuit Judge.

This is an appeal from a summary judgment granting the appellee—plaintiff below—judgment against the defendant below, and dismissing defendant's counterclaim. The suit was brought to enforce a judgment of a state court, The Supreme Court of New York, enforcing and amending an award of arbitrators, conducted under New York law, under the provisions of a written agreement between plaintiff and defendant.

[1] Recognizing the general rule, that, in a suit on a judgment of a court of one of the states, full faith and credit requires the enforcement of the judgment unless it is shown that the judgment was entered without jurisdiction, the defendant attacked the judgment on the ground that the court was without jurisdiction to enter the judgment and on the ground that the judgment was based on fraud. This latter defense was based on the

claim that the award of the Arbitration Board was for $5,455.63, and that it was amended in the New York Supreme Court and a judgment entered for a sum in excess of $20,000.

The stipulated facts and the exhibits show that plaintiff had agreed to the arbitration in accordance with New York law and had also agreed to the jurisdiction of the Arbitration Board and the courts of New York as provided in New York law,[1] and there was no question but that the Arbitration Board and the court had jurisdiction of defendant which had expressly agreed to their jurisdiction. It was also shown without dispute that defendant had been notified in the manner agreed upon of the proceeding filed in the New York court for amendment of the arbitration and had failed to appear at the hearing, despite the notice which was given it.

[2] Plaintiff relied below and relies here on the established rule that in a suit on a judgment of a state court, predicated on proper jurisdiction over the subject matter and person, as was the case here, through the consent thereto of defendant under the full faith and credit clause and the decisions under it, the judgment is not subject to collateral attack. Ripley Fabrics Corp. v. Hymen, D.C., 91 F.Supp. 1007; Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 287; Morris v. Jones, 329 U.S. 545, 67 S.Ct. 451, 91 L.Ed. 488.

[3-5] In a suit on such a judgment, no defense may be set up which goes to the merit of the original controversy. Milwaukee County v. M. E. White Co., 296 U.S.

[1]Article 84, Civil Practice Act, State of New York, Sections 1448, 1450, 1451, and 1462-a.

268, 56 S.Ct. 229, 80 L.Ed. 220. There is no better settled principle in the law than that a judgment for the merits in one suit is res judicata in another, where the parties and the subject matter are the same, not only as respects matters actually presented to sustain or defeat the right asserted but also as to any other available matter which might have been presented. Cromwell v. County of Sac, 94 U.S. 351, 24 L.Ed. 195; Baltimore Steamship Co. v. Phillips, 274 U.S. 316, 47 S.Ct. 600, 71 L.Ed. 1069. The defendant, having voluntarily chosen not to assert any defenses in the New York proceeding, is foreclosed from asserting them now. Such matters are res judicata and the New York judgment must be given full faith and credit.

[6] Appellant's complaint that its allegations of fraud should have entitled it to a re-litigation of the New York proceeding are without substance or merit, first because there is no claim presented that the fraud was extrinsic, that is that it prevented a trial of issues determinative of the controversy, United States v. Throckmorton, 98 U.S. 61, 25 L.Ed. 93; Crouch v. McGraw, 134 Tex. 633, 138 S.W.2d 94. The appellant had every opportunity to litigate the case in New York. It failed through its negligence or deliberate omission to do so and was not prevented from doing so by any act of appellee, and it may not litigate the issue in a collateral attack upon the judgment. While a distinction is made between extrinsic and intrinsic fraud, United States v. Throckmorton, supra, United States v. Beebe, 180 U.S. 343, 21 S.Ct. 371, 45 L.Ed. 563; 49 C.J.S. Judgments § 372(b), p. 735, this becomes irrelevant on a collateral attack on a judgment after it is determined that the court had jurisdiction. The matter of jurisdiction is the sole point of inquiry. On this premise of jurisdiction, the courts have held that a ground of

fraud cannot be pleaded in an action in one state on a judgment obtained in another. Simmons v. Saul, 138 U.S. 439, 11 S.Ct. 369, 34 L.Ed. 1054. In addition, nothing is stated in the defendant's answer or otherwise shown which would support a claim of fraud even if that could be gone into. As the stipulated facts and the exhibits set out in the record show, defendant was notified of and given full opportunity to contest the motion of the plaintiff in the New York Supreme Court to amend the arbitration.

[7, 8] Further, a careful examination of the judgment and the record in respect to the amendment of the arbitration discloses no fact which supports the defendant's claim of fraud. Having consented by solemn agreement to arbitration and to the jurisdiction of the New York courts and laws, in all matters relating to the contracts, its validity, and the obligations thereunder, and these having been determined under New York law, the defendant could have no complaint which would support a collateral attack. "An agreement that all differences arising under contract shall be submitted to arbitration relates to the law of remedies, and the law that governs remedies is the law of the forum." Meacham v. Jamestown F. & C. R. Co., 211 N.Y. 346, 105 N.E. 653, 655. This rule is well settled in Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109, 44 S.Ct. 274, 68 L.Ed. 582, and Marine Transport Corp. v. Dreyfus, 284 U.S. 263, 52 S.Ct. 166, 76 L.Ed. 282. The arbitration agreement was valid under the laws of the State of New York, and the New York judgment must be given full faith and credit, as the district judge below correctly held. His judgment was right and it is therefore affirmed.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1968

No. 289

FIRST AMERICAN INSURANCE COMPANY,
Petitioner,

vs.

JOHN P. O'CONNOR
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The respondent, John P. O'Connor, files this brief in opposition to the petition for writ of certiorari heretofore filed in this Court.

The petitioner, First American Insurance Company, seeks review of a judgment and opinion of the United States Court of Appeals for the Fifth Circuit, affirming a judgment of the United States District Court, Southern District of Florida which held that an Illinois money judgment was entitled to full faith and credit and enforcement by the United States District Court for the Southern District of Florida.

I

OPINIONS BELOW

The opinion of the Court below is reported in 392 F^2 588 and attached to petitioner's brief as Appendix A.

II

QUESTION PRESENTED

Respondent disagrees with the question presented as framed in the petition (P.2). Rather the question here is simply: Whether a valid and enforceable Illinois judgment is entitled to full faith and credit and enforcement by the United States District Court for the Southern District of Florida.

III

STATEMENT

An Illinois judgment was entered on a jury verdict against petitioner's predecessor-successor, Public National Insurance Company, on June 19, 1964. It is conceded that the petitioner, First American Insurance Company, as successor to Public National Insurance Company, assumed the liabilities thereof, including its liability under its policy issued to respondent providing coverage for bodily injury and that the policy was in full force and effect on all dates material hereto. It was further conceded that respondent would be entitled to recover of petitioner if the District Court was obliged to give full faith and credit to the Illinois judgment.

Approximately one year after the entry of the judgment, the firm of Meyers and Mathias of Chicago, appearing on behalf of the petitioner, filed a Motion to Vacate this judgment in the Illinois Court, attacking its validity on numerous procedural grounds. After full hearing thereon—**at which time all parties to the action were represented**—this Motion was finally denied on September 8, 1965. **No appeal was taken from this Order.**

Enforcement of this final judgment was sought under the full faith and credit clause of the United States Constitution, in the United States District Court for the Southern District of Florida and a judgment in favor of the respondent was entered by this Court on Feb. 10, 1967.

IV

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

There simply is no conflict of this decision (392 F^2 588) with other decisions of other Circuit Courts of Appeal on the same issue; nor is there any conflict with any prior decisions of this Court; nor was any grave or important question involving Federal law or procedure passed upon; nor was any departure from accepted standards of judicial procedure domonstrated; thus, no writ of certiorari should issue here. (See Rules of United States Supreme Court, Rule 19). All that was involved in the Fifth Circuit was a review of a routine application of the full faith and credit clause in the enforcement of a simple foreign money judgment and the Court upholding the action of the District Judge. Thus, there is no reason at all for this Court to take jurisdiction of the matter.

Petitioner relies on the case of **Windsor vs. McVeigh,** 93 U.S. 274, 23 L. Ed. 914 (1876) to establish conflict jurisdiction. This case of Civil War vintage was an instance of outright refusal of a Court to accept a general appearance on behalf of a defendant to an eminent domain proceeding as submitting the defendant to the jurisdiction of the Court. The general appearance was accepted in the Illinois proceedings. **McVeigh** was a spectacle of a Court rendering judgment after it expressly divested itself of jurisdiction. The Court in Illinois never divested itself of jurisdiction. **McVeigh** saw the Court accept the contention of government counsel that the defendant be precluded from participation in the suit because he was a Confederate sympathizer. In the instant case, Court remained open for any and all efforts by the insured or the insuror to make a defense. In the oft repeated words of the Court, there was more than a full and fair opportunity to litigate, and that is in such sharp contrast to the situation presented via the citation to **Windsor vs. McVeigh** that respondent must insist on its total inapplicability to this cause.

Petitioner further asserts that the Florida Courts would not accord this judgment full faith and credit and enforcement. This is not true. In an almost identical factual situation in the case of **Haas vs. Haas,** 59 So 2d 640, wherein a New York judgment was sought to be enforced in Florida, and the defense of lack of jurisdictional due process interposed, the Supreme Court of Florida said, P. 642:

"... And in the second place, by filing in the New York Court his Motion to Vacate and set aside the 1948 decree the respondent must be held to have submitted to the New York Court the question of the validity of such decree, and its order denying such motion is conclusive on this question in this Court. While this Court is not required to recognize the judgment of another state where the judgment was rendered by a court without jurisdiction, ... this rule is subject to the limitation that if the Court of the state which rendered the judgment has expressly litigated the jurisdictional questions ... that determination becomes res judicata on those points and is itself protected by the full faith and credit of the Constitution of the United States. The jurisdictional ... question cannot be re-litigated a second time in another state. (Cases cited)

There is no reason to grant the writ of certiorari in this routine case of enforcement of a foreign money judgment. No important Federal question was decided, and no special reason for granting the writ has been shown and the case presents no substantial or important question to be settled by this Court. No new principle of law has been pronounced or no departure from established principles of law or procedure has been shown.

V

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari was mailed to Joe N. Unger, Esq., 1525 Alfred I. duPont Building, Miami, Florida and Alvin N. Weinstein, Esq., 311 Biscayne Building, Miami, Florida, Counsel for Petitioner, this_____day of_____, 1968.

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J. B. Spence